

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 14<sup>th</sup> day of March, two thousand eight.

**PRESENT:**

HON. RALPH K. WINTER,  
HON. GUIDO CALABRESI,  
HON. PETER W. HALL,  
*Circuit Judges.*

\_\_\_\_\_  
LIXIA CHEN,  
\_\_\_\_\_*Petitioner,*

v.

07-2223-ag  
NAC

MICHAEL B. MUKASEY,  
UNITED STATES ATTORNEY GENERAL,<sup>1</sup>  
*Respondent.*

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<sup>1</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael Mukasey is automatically substituted for former Attorney General Alberto Gonzales as a respondent in this case.

1     **FOR PETITIONER:**             **Scott E. Bratton, Cleveland, Ohio.**

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3     **FOR RESPONDENTS:**           **Peter D. Keisler, Assistant Attorney**  
4                                   **General; Barry J. Pettinato,**  
5                                   **Assistant Director; Tim Ramnitz,**  
6                                   **Attorney, Office of Immigration**  
7                                   **Litigation, U.S. Department of**  
8                                   **Justice, Washington, D.C.**  
9

10           UPON DUE CONSIDERATION of this petition for review of a  
11     Board of Immigration Appeals ("BIA") decision, it is hereby  
12     ORDERED, ADJUDGED, AND DECREED that the petition for review  
13     is DENIED, in part, and DISMISSED, in part.

14           Petitioner Lixia Chen, a native of the People's  
15     Republic of China, seeks review of an April 26, 2007 order  
16     of the BIA affirming the September 15, 2005 decision of  
17     Immigration Judge ("IJ") Robert D. Weisel denying  
18     petitioner's applications for asylum, withholding of  
19     removal, relief under the Convention Against Torture  
20     ("CAT"), and cancellation of removal. *In re Lixia Chen*, No.  
21     A73 163 692 (B.I.A. Apr. 26, 2007), *aff'g* No. A73 163 692  
22     (Immig. Ct. N.Y. City Sept. 15, 2005). We assume the  
23     parties' familiarity with the underlying facts and  
24     procedural history in this case.

25           When the BIA adopts the decision of the IJ and  
26     supplements the IJ's decision, this Court reviews the  
27     decision of the IJ as supplemented by the BIA. *See Yan Chen*

1     *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). This Court  
2     reviews the agency's factual findings, including adverse  
3     credibility determinations, under the substantial evidence  
4     standard, treating them as "conclusive unless any reasonable  
5     adjudicator would be compelled to conclude to the contrary."  
6     8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*,  
7     386 F.3d 66, 73 & n.7 (2d Cir. 2004) *overruled in part on*  
8     *other grounds by Shi Liang Lin v. U.S. Dept. of Justice*, 494  
9     F.3d 296, 305 (2d Cir. 2007) (en banc). However, we will  
10    vacate and remand for new findings if the agency's reasoning  
11    or its fact-finding process was sufficiently flawed. *Cao He*  
12    *Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 406 (2d Cir.  
13    2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir.  
14    2004).

15       As an initial matter, while Chen did not properly raise  
16    asylum, withholding of removal or CAT before the BIA, *see* 8  
17    U.S.C. § 1252(d)(1), her failure to exhaust is excused  
18    because the BIA's decision specifically addressed Chen's  
19    asylum claim, the denial of which served as the basis for  
20    the denial of her withholding of removal and CAT claims.  
21    *See Xian Tuan Ye v. DHS*, 446 F.3d 289, 296-297 (2d Cir.  
22    2006); *Waldron v. INS*, 17 F.3d 511, 515 n.7 (2d Cir. 1994).

1           However, Chen did not argue before the agency that she  
2           had a well-founded fear of persecution based on the forcible  
3           insertion of an IUD; thus, Chen failed to exhaust this  
4           argument and we need not consider it. *Steevenez v.*  
5           *Gonzales*, 476 F.3d 114, 117-118 (2d Cir. 2007).

6           The record supports the agency's finding that Chen  
7           failed to establish a well-founded fear of persecution  
8           because her claim was "entirely speculative." *See Jian Xing*  
9           *Huang v. INS*, 421 F.3d 125, 129 (2d Cir. 2005). The agency  
10          properly determined that Chen's testimony regarding the  
11          experience of Chen's mother, who was forcibly sterilized  
12          after having four children, was not probative of Chen's fear  
13          of persecution based on having one U.S.-born child. *See*  
14          *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004)  
15          (providing that an objective fear of persecution is  
16          "dependent upon the context and believability [the  
17          applicant] can establish for h[er] claims through  
18          presentation of reliable, specific, objective supporting  
19          evidence").

20          Because claims for withholding of removal and CAT  
21          require objective evidence of future persecution, *see INS v.*  
22          *Cardoza-Fonseca*, 480 U.S. 421, 430 (1987), the agency's

1 finding that Chen had failed to prove the objective  
2 reasonableness of her fear necessarily precluded success on  
3 her applications for withholding of removal and relief under  
4 the CAT. See *Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir.  
5 2006).

6 Finally, we dismiss Chen's challenge to the agency's  
7 denial of cancellation of removal. Chen argues that she is  
8 not challenging the discretionary determination of whether  
9 the hardship standard has been met, but rather is  
10 challenging "the Agency's failure to articulate and properly  
11 apply the legal standard for cancellation of removal."  
12 However, it is clear from Chen's arguments that she is  
13 challenging the agency's discretionary balancing of the  
14 facts. See *Barco-Sandoval v. Gonzales*, 496 F.3d 132, 135  
15 n.3, 139 (2d Cir. 2007) (amended January 25, 2008)<sup>2</sup>  
16 ("[D]espite the nomenclature used by Barco-Sandoval, his  
17 assertion that he should have obtained cancellation of  
18 removal under the applicable legal standard constitutes a  
19 'mere[ ] quarrel[ ] over the factual findings or  
20 justification for the discretionary choices' made by the  
21 agency, a quarrel that we lack jurisdiction to review.").

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<sup>2</sup>The case, as amended, does not yet appear in the Federal Reporter.

1       Chen argues that the agency did not consider country  
2       conditions or the fact that she will be forced to pay  
3       tuition to send her daughter to school in China in denying  
4       her application and that she did establish the requisite  
5       hardship. These arguments are all factual quarrels with the  
6       agency's discretionary decision and the Court does not have  
7       jurisdiction to review such arguments. *Barco-Sandoval*, 496  
8       F.3d at 139; *De La Vega v. Gonzales*, 436 F.3d 141, 144 (2d  
9       Cir. 2006).

10       For the foregoing reasons, the petition for review is  
11       DENIED, in part and DISMISSED, in part. As we have  
12       completed our review, the pending motion for a stay of  
13       removal in this petition is DISMISSED as moot. Any pending  
14  
15       request for oral argument in this petition is DENIED in  
16       accordance with Federal Rule of Appellate Procedure  
17       34(a)(2), and Second Circuit Local Rule 34(d)(1).

18                       FOR THE COURT:  
19                       Catherine O'Hagan Wolfe, Clerk

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21                       By: \_\_\_\_\_  
22  
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